

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

Dakotans for Health, Rick Weiland, and)	
and Adam Weiland,)	
)	
Plaintiffs,)	Civ. <u>5:23-cv-5042</u>
)	
v.)	
)	
Bob Ewing, Brandon Flanagan, Randy)	
Deibert, Richard Sleep, and Eric)	
Jennings, Lawrence County)	
Commissioners, all sued in their)	
official capacities,)	
)	
Defendants.)	
_____)	

**Complaint for Temporary Restraining Order,
Preliminary Injunction, and Permanent Injunction
Restraining Defendants from Enforcing or Threatening to Enforce
Their Political Activity Policy**

Parties

1. Dakotans for Health is a South Dakota ballot question committee and a healthcare advocacy network dedicated to improving healthcare and health outcomes.
2. Rick Weiland is Chair of Dakotans for Health.
3. Adam Weiland works for Dakotans for Health, and with Rick Weiland, manages Dakotans for Health.
4. Bob Ewing, Brandon Flanagan, Randy Deibert, Richard Sleep, and Eric Jennings are the Lawrence County Commissioners, and are sued in their official capacities.

Jurisdiction

5. This action is brought pursuant to 42 U.S.C. § 1983. This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(3).

Facts

6. The right to petition government for a redress of grievances is perhaps the most fundamental American freedom.
7. Just in the past nine years, and despite the opposition of South Dakota's dominant political party, citizens have used the initiative process to enact new laws

on patient choice of health care provider (Initiated Measure 17 in 2014), the minimum hourly wage (Initiated Measure 18 in 2014), victims' rights (Constitutional Amendment S in 2016), predatory lending (Initiated Measure 21 in 2016), campaign finance and lobbying (Initiated Measure 22 in 2016), recreational marijuana (Constitutional Amendment A in 2020), medical marijuana (Initiated Measure 26 in 2020), and Medicaid expansion (Constitutional Amendment D in 2022).

8. Plaintiffs engage in core First Amendment activities seeking political change, including petition circulation to place initiated measures on the ballot, and political action to pass those measures.

9. Plaintiffs drafted and are now, through their agents and employees, circulating petitions that seek to place initiated measures on the November 2024 ballot that would allow the people of South Dakota to choose to restore their *Roe v. Wade* rights, and to eliminate the state sales tax on food.

10. Plaintiffs use volunteer and paid circulators to circulate petitions to obtain signatures needed to qualify these measures for the ballot.

11. For the November 2024 election, 35,017 signatures are needed to place the *Roe v. Wade* initiated constitutional amendment on the ballot, and 17,509

signatures are needed to place the initiated law to eliminate the state sales tax on food on the ballot.

12. More voters use the Lawrence County Courthouse and Administrative Annex Building than any other public building in Lawrence County.

13. The Lawrence County Courthouse and Administrative Annex Building are excellent locations at which to collect signatures to place an initiated measure on the ballot.

14. Petition circulators for Dakotans for Health have collected signatures at or near the Lawrence County Courthouse and Administrative Annex Building.

15. The Lawrence County Political Activity Policy requires petition circulators to abide by it while they circulate petitions on what it terms the "Lawrence County campus," which includes the Administrative Annex Building and the Courthouse. A copy is attached as Exhibit 1.

16. The Political Activity Policy prohibits petition circulation on the entire campus except in "the plaza area located between the Lawrence County Administrative Annex Building and the Lawrence County Courthouse."

17. Exhibit 2 is a Google Maps overhead photograph. The Lawrence County Administrative Annex Building is labeled "Lawrence County Treasurer."

The Administrative Annex Building includes the offices of the County Treasurer, Auditor, Commissioners, Public Assistance, Equalization, Planning and Zoning, Register of Deeds, Computer Department, States Attorney, and Public Defender. Exhibit 3.

18. On Exhibit 2, three wavy multicolored lines have been added to show the two sidewalks that lead to the main entrance to the Administrative Annex Building, and the general path by which people who park in the public lot in front of the main entrance would travel to get to the main entrance. The circles on the other side of the building show the plaza area to which Lawrence County confines petition circulators.

19. Exhibit 4 shows the sidewalk in front of the main entrance to the Administrative Annex Building.

20. Exhibit 5 is minutes of the Lawrence County Commission meeting on March 10, 2020, when the Political Activity Policy was adopted.

21. Exhibit 6 is the Pennington County Petition Circulator Code of Conduct.

**Cause of Action—
Unconstitutional Restriction of Core Political Speech**

22. Everything above is incorporated here by this reference.

23. Sidewalks and other public areas surrounding a government building are traditional public forums for political speech.

24. Lawrence County's Political Activity Policy prohibits petition circulation in and on *all* sidewalks in front of the Administrative Annex Building, and on all areas on the rest of the campus except for one small, out-of-the-way area where it is allowed.

25. Allowing petition circulation in that small area does not and cannot justify prohibiting petition circulation everywhere else.

26. The small area where petition circulation is allowed is an inadequate location for petition circulators to solicit petition signatures, especially when compared with all the areas in which solicitation is prohibited.

27. Petition circulation requires encountering potential signers, discussing the issue with them, and attempting to persuade them to sign a petition, all of which defendants' policy makes substantially harder.

28. Everything that makes petition circulation harder makes it more costly, and makes it less likely that a particular petition will receive enough signatures to qualify for the ballot and thereby give voters a chance to accept or reject it.

29. The Political Activity Policy unconstitutionally restricts plaintiffs' right to engage in core political speech, and unconstitutionally impairs plaintiffs' efforts to obtain enough signatures to qualify the *Roe v. Wade* and food sales tax petitions for the ballot, in violation of the First Amendment.

Request for Relief

Plaintiffs request this Court grant:

1. A temporary restraining order, a preliminary injunction, and a permanent injunction restraining defendants from enforcing or threatening to enforce their policy;
2. Attorney fees and costs pursuant to 42 U.S.C. § 1988; and
3. Such other and further relief as the Court deems just.

Dated: June 20, 2023

/s/ James D. Leach
James D. Leach
Attorney at Law
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Rapid City, SD 57702
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jim@southdakotajustice.com
Attorney for Plaintiffs

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Dakotans for Health, Rick Weiland, and Adam Weiland

(b) County of Residence of First Listed Plaintiff Minnehaha
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James D. Leach/Attorney/1617 Sheridan Lake Rd/605
341 4400

DEFENDANTS

Bob Ewing, Brandon Flanagan, et al, Lawrence Co.
Commissioners, in their official capacities

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC 1983

Brief description of cause:
First Amendment violation by restriction of petition circulation rights

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

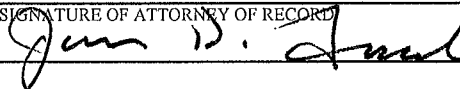
JUDGE Hon. Roberto Lange

DOCKET NUMBER 23-CV-4075-RAL

DATE

Jun 20, 2023

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____